



## ENVIRONMENTAL PROTECTION AGENCY

[EPA-EPA-HQ-OECA-2021-0763; FRL-9204-01-OECA]

### Withdrawal of Two Answers to Frequent Questions About Property Management Companies and the Toxic Substances Control Act Lead-Based Paint Renovation, Repair, and Painting Rule

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice and opportunity for public comment.

**SUMMARY:** The EPA intends to withdraw two Frequently Asked Questions (FQs) concerning property management companies (PMCs) and their compliance responsibilities under the Toxic Substances Control Act (TSCA) Lead Renovation, Repair and Painting (RRP) Rule. This notice explains the rationale for the withdrawal, the impact on the regulated community, how EPA will exercise its enforcement discretion, and invites public comment. The requirements of the RRP rule are intended to protect people, especially children, from the hazardous health effects of lead from lead-based paint.

**DATES:** The EPA intends to withdraw FQ 23002-13650 and 23002-18348 (the “PMC FQs”), found below and at <https://www.epa.gov/lead/fqs-rrp-rule> on **[insert date 135 days after publication in the Federal Register]**. However, due to the significant public interest in the issues addressed in this notice, the EPA is providing an opportunity for public comment on the EPA’s intended action. The EPA is requesting comments by **[insert date 30 days after publication in the Federal Register]** to identify any relevant information that could change the EPA’s decision to withdraw these two FQs. Following the comment period and the Agency’s consideration of comments received by that date, the EPA intends to post a memorandum that states whether the withdrawal will take effect as planned. The EPA would make the memorandum available on its website at: [www.epa.gov/lead](https://www.epa.gov/lead), and in the public comment docket for this notice at Docket EPA-HQ-OECA-2021-0763. By providing advance notice of the planned withdrawal of the FQs in 135 days from publication in the *Federal Register*, the EPA is providing more than sufficient time for PMCs to obtain any needed certification under the Lead RRP rule.

**ADDRESSES:** You may send comments, identified by Docket ID No. EPA-HQ-OECA-2021-0763, by any of the following methods:

- Federal eRulemaking Portal: <https://www.regulations.gov/> (our preferred method). Follow the online instructions for submitting comments.
- Agency Web Site: [www.epa.gov/lead](http://www.epa.gov/lead). Follow the online instructions for submitting comments.
- Mail: U.S. Environmental Protection Agency, EPA Docket Center, OECA Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- Hand Delivery / Courier: EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue, NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m. – 4:30 p.m., Monday – Friday (except Federal Holidays).

*Instructions:* All submissions received must include the Docket ID No. for this notice. Comments received may be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional information on the notice, see the "Public Participation" heading of the SUPPLEMENTARY INFORMATION section of this document. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are open to the public by appointment only to reduce the risk of transmitting COVID-19. Our Docket Center staff also continues to provide remote customer service via email, phone, and webform. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at <https://www.epa.gov/dockets>.

**FOR FURTHER INFORMATION CONTACT:** Aimee Hessert, Federal Facilities Enforcement Office (MC 2261A), Environmental Protection Agency, 1200 Pennsylvania Ave, NW, Washington DC 20460; telephone number: (202) 564-0993; email address: [hessert.aimee@epa.gov](mailto:hessert.aimee@epa.gov); and Amos Presler, Office of Civil Enforcement (MC 2249A), Environmental Protection Agency, 1200 Pennsylvania Ave, NW,

Washington DC 20460; telephone number: (202) 564-1076; email address: [presler.amos@epa.gov](mailto:presler.amos@epa.gov).

Comments or questions submitted by email must include "Docket EPA-HQ-OECA-2021-0763" in the subject line of the email message.

## **SUPPLEMENTARY INFORMATION:**

### **I. Public Participation**

#### *A. Written Comments*

Submit your comments, identified by Docket ID No. EPA-HQ-OECA-2021-0763, at <https://www.regulations.gov> (our preferred method), or the other methods identified in the ADDRESSES section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit to EPA's docket at <https://www.regulations.gov> any information you consider to be Proprietary Business Information (PBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

Due to public health concerns related to COVID-19, the EPA Docket Center and Reading Room are open to the public by appointment only. Our Docket Center staff also continues to provide remote customer service via email, phone, and webform. For further information and updates on EPA Docket Center services, please visit us online at <https://www.epa.gov/dockets>.

The EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention (CDC), local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID-19.

## **II. GENERAL INFORMATION**

### *A. Does This Action Affect You?*

This announcement matters to you if you are a PMC, if you are employed by a PMC, if you live in target housing managed by a PMC, or if you work with PMCs on renovation, repair or painting activities covered by the EPA's RRP rule. Target housing includes residential dwellings constructed before 1978. This notice also matters to you if you have a child under the age of 6 years who regularly visits a "child-occupied facility," such as a daycare or a kindergarten, in a pre-1978 building managed by a PMC.

### *B. Intended Action*

This Notice by the Environmental Protection Agency (EPA) announces it intends to withdraw two Frequently Asked Questions ("FQs") concerning property managers and property management companies (collectively, "property management companies" or "PMCs") and their compliance responsibilities under the Lead-based Paint Renovation, Repair, and Painting Rule ("RRP rule"), section 402(c) of the Toxic Substances Control Act (TSCA), 40 CFR part 745, subpart E, including the pre-renovation information distribution requirements promulgated under TSCA section 406(b) and codified at 40 CFR 745.84. The FQs are viewable on the EPA website: [www.epa.gov/lead/fqs-rrp-rule](http://www.epa.gov/lead/fqs-rrp-rule).

The first of the PMC FQs to be withdrawn indicated the EPA's prior statement that a PMC did not need to obtain firm certification for itself or renovator certification for an employee if none of its employees "do the work" of the renovation:

**Question (23002-13650):** A property management company performs most of the clerical functions of the business, and hires plumbers, electricians, carpenters, etc., for its renovation needs. Does the property management company need firm certification?

**Answer:** A property management company acts as an agent for the landlord and has the same responsibilities as the landlord under the RRP rule. Therefore, if the property management company uses its own employees to do the work, the property management company must be a certified firm and one of the employees must be a certified renovator. If the property management company hires a renovation firm to perform the renovation, the property management company does not need firm or renovator certification, but the firm the property management company hires must be certified and must perform the renovation using a certified renovator that directs and provides on-the-job training to any workers that are not certified renovators.

The second of the two PMC FQs explained how the EPA would exercise its enforcement discretion under circumstances in which a certified firm hired by the PMC fails to comply with a requirement of the RRP rule:

**Question (23002-18348):** If a property management company hires a certified firm to perform a renovation and the firm violates the RRP rule, for example, by failing to distribute the necessary materials or keep proper records, which entity is subject to enforcement action, the property manager or the certified firm?

**Answer:** It is the certified firm's responsibility to comply with the requirements of the RRP rule, and any enforcement action taken would be against the firm.

With the withdrawal of FQ 23002-13650 and FQ 23002-18348, the EPA would assess compliance by PMCs with the RRP rule, as it would for any other entity, according to the broadly applicable language of the RRP rule: that no firm may perform, offer, or claim to perform renovations without certification from EPA in target housing or child-occupied facilities (unless the renovation qualifies for a specified exception). See, e.g., 40 CFR 745.81(a)(2)(ii). Furthermore, the EPA will evaluate compliance and appropriate enforcement actions on the basis of each case's individual facts and circumstances, and the EPA may exercise its enforcement discretion regarding PMC obligations.

As stated in the introduction to the current FQs document (available at <https://www.epa.gov/lead/answers-frequent-questions-about-epas-lead-renovation-repair-and-painting-rrp-rule>), the FQs present the agency's

preliminary responses, may be periodically revised, and do not necessarily bind the EPA to a specific application of the RRP rule. This notice, like the PMC FQs, is intended solely for guidance and does not alter any statutory or regulatory requirements and does not create binding obligations.

For information on how to get certified, please see <https://www.epa.gov/lead/renovation-repair-and-painting-program-contractors>

### *C. Background*

The RRP rule is intended to protect residents of pre-1978 homes from lead-based paint disturbed in the course of renovation, repair or painting activities. Compliance with the RRP rule's requirements protects people from the hazardous health effects of lead, especially children six years old and younger and pregnant women, both of whom are most susceptible to the effects of lead. Even low levels of lead in the blood of children can result in: behavior and learning problems; lower IQ and hyperactivity; slowed growth; hearing problems; and anemia. In rare cases, ingestion of lead can cause seizures, coma and even death. Lead accumulates in the body over time, where it is stored in the bones along with calcium. During pregnancy, lead is released from the pregnant mother's bones, along with calcium, and can pass from the mother, exposing the fetus or the breastfeeding infant to lead. This can result in serious effects to the developing fetus and infant. It can cause the baby to be born too early or too small; hurt the baby's brain, kidneys, and nervous system; increase the likelihood of learning or behavioral problems; and put the mother at risk for miscarriage.

Congress recognized almost thirty years ago, upon enactment of the legislation that included TSCA Title IV, that lead in paint was responsible for "low-level lead poisoning [that was] widespread among American children, afflicting as many as 3,000,000 children under age 6, with minority and low-income communities disproportionately affected." 42 U.S.C. 4851. Disproportionate risks of lead exposure in minority and low-income communities persist today.<sup>1</sup> Withdrawal of the PMC FQs is important for the safety of all who live in PMC-managed housing, and it is vitally important to the health of children under the age of 6 years, particularly in communities burdened by exposure to high levels of lead-based paint in pre-1978 housing. Communities with environmental justice concerns often include a higher proportion of rental housing. PMCs manage a significant portion of the nation's rental housing market, and each PMC often manages a large number of rental housing units. For example, the largest 50

PMCs alone control 3.4 million units.<sup>2</sup> PMCs also manage approximately 205,000 family housing projects, which comprise 99% of privatized military housing. More than 3.18 million children under the age of 6 years live in pre-1980 rental housing.<sup>3</sup> A portion of these children may be at risk of exposure to lead-based paint hazards.

#### *D. RRP Rule Applicability*

The RRP rule broadly applies to renovation, repair or painting activities performed for compensation that disturb painted surfaces in target housing and child occupied facilities.

When the EPA developed the RRP rule, as required by section 402(c) of TSCA, it defined the scope of the RRP rule based on the circumstances of the renovation, repair and painting activity, rather than the person or entity performing the renovation. The RRP rule “applies to all renovations performed for compensation in target housing and child-occupied facilities . . . .” 40 CFR 745.82(a). The purpose of this broad application, as stated in the regulation is “to ensure” that “individuals performing renovations . . . are properly trained; renovators and firms performing these renovations are certified; and the work practices in [the regulation] are followed . . . .” § 745.80(b). Work practice requirements, such as work-area containment, and a prohibition on certain work practices, such as open-flame burning, minimize exposure to lead-based paint hazards.

The regulations provide that “no firm may perform, offer, or claim to perform renovations without certification from EPA . . . in target housing or child-occupied facilities [unless an exception applies].” § 745.81(a)(2)(ii). The regulations broadly define “firms” to include: “a company, partnership, corporation, sole proprietorship or individual doing business, association, or other business entity; a Federal, State, Tribal or local government agency; or a nonprofit organization.” § 745.83.

#### *E. Basis for EPA’s PMC FQs*

In an effort to help the public understand and comply with the RRP rule, the EPA posted answers to frequent questions on its website at <https://www.epa.gov/lead/fqs-rrp-rule> (“FQ document”). When the EPA added the PMC FQs to the FQ document in 2010, it did not have experience with implementation of the RRP rule and the PMC industry’s response to it. PMC FQ 23002-13650 states, “if the property

management company hires a renovation firm to perform the renovation, the property management company does not need firm or renovator certification.” The FQ, which as noted above is not binding, analogized PMCs to landlords and provided that a PMC that did not use its own employees “to do the work” would not have enforceable obligations under the RRP rule and, for example, would not need to ensure that lead-safe work practices were followed. The FQ did not elaborate on the phrase “do the work.” At the time the FQ was written, EPA generally did not think that a PMC that hired a renovation firm to perform a renovation would itself be doing work such that it also would be performing or offering to perform the renovation for compensation. Therefore, EPA did not think the PMC would need to comply with the RRP rule and need to be a certified firm. Consistent with this prior interpretation, FQ 23002-18348 states that any enforcement action taken would be against the renovation firm, not the PMC. EPA now has experience implementing the RRP rule and understands there are circumstances where a PMC hires a renovation firm to perform the renovation, and also engages in activities such that the PMC also performs or offers to perform the renovation, and these circumstances are described in more detail in this notice.

#### *F. EPA’s Experience Implementing the RRP Rule Supports Withdrawal of the PMC FQs*

The EPA has gained experience implementing the RRP rule since 2010 and, based on this experience, has a better understanding of the activities commonly undertaken by PMCs. As explained below, the EPA has concluded that it is not appropriate to make categorical assumptions about PMC compliance obligations and that these obligations should be determined based on the facts and circumstances of each individual case. While PMCs may in some instances and in some circumstances act as agents of a landlord, unlike landlords they are not property owners, but instead are a distinct type of entity that performs services for compensation. In the EPA’s experience, PMCs often do not hire certified renovation firms. Furthermore, the EPA has found many circumstances where a PMC that hires a renovation firm for a renovation also performs or offers to perform the renovation for compensation in target housing. For example, in some cases, the PMC might offer to perform renovation, repair, or painting activities through its contractual agreements with the building owner, and in other cases the PMC might perform an element of the renovation for compensation.



Given the EPA's understanding of these circumstances, the EPA intends to assess compliance by PMCs with the RRP rule, just as it would for any other entity, in accordance with the broadly applicable language of the RRP rule: that no firm may perform, offer, or claim to perform regulated renovations without certification from the EPA in target housing or child-occupied facilities. See, e.g., 40 CFR 745.81(a)(2)(ii). Consistent with the requirements in the RRP rule, the EPA will evaluate compliance and appropriate enforcement actions on the basis of each case's individual facts and circumstances, and the EPA may exercise its enforcement discretion regarding PMC obligations.

#### *G. Examples of PMCs' Varying Levels of Involvement with Renovations*

The following discussion is intended to help elaborate on how the RRP rule may apply to PMCs when they hire a renovation firm. In some cases, the PMC might offer to perform renovation, repair, or painting activities through its contractual agreements with the building owner, and in other cases the PMC might perform an element of the renovation for compensation.

When a PMC enters into a business relationship with the property owner, the PMC typically agrees to perform various property management services. In some circumstances, a PMC's services may be strictly limited to leasing and rent collection. That circumstance would be unlikely to give rise to facts indicating that a PMC "performed" a renovation.

More often, a PMC agrees to provide—and is compensated for—property management services that include maintenance, repair, painting, renovations, or other activities that disturb painted surfaces and may be subject to the RRP rule and require a certified renovator. In such agreements, oral contracts, or written contracts, the agreement obligates the PMC to perform the renovation. Whether the PMC uses its own employees to perform the work or hires an outside firm to perform the work, the PMC remains obligated by such an agreement with the property owner (and typically is compensated for fulfilling such obligations) to ensure that the renovation is performed.

Specification of such "renovation" responsibilities in a written contract between a property owner and a PMC is not essential to establishing RRP rule applicability to the PMC, especially if other facts establish that the PMC offered to perform or actually did perform some other action necessary to ensure the performance of a renovation activity.

When a PMC hires a firm for renovation, repair or painting activities, the PMC, as part of the business

relationship with the property owner, is typically compensated for managing certain activities that are necessary or even integral to the performance of the renovation, repair or painting activity, including (but not limited to):

- Soliciting and evaluating contractor bids;
- Applying for permits, as appropriate;
- Granting contractors access to the property;
- Overseeing contractor work on the property;
- Informing tenants of renovation activity;
- Verifying completion of renovation activity; or
- Remitting payment to the contractors.

The PMC may even oversee or supervise the outside renovation firms, individuals and contractors who are not the PMC's employees but are doing activities that are recognized as part of the renovation in the RRP rule. The PMC may also coordinate work schedules of the various outside contractors.

Compensation of a PMC by the property owner for any of these or similar activities may establish that a PMC is performing a renovation for compensation and must comply with the RRP rule, even if the PMC uses an independent contractor instead of its own employees to do the specific activities that disturb paint surfaces. Consistent with the requirements in the RRP rule, the EPA will evaluate compliance and appropriate enforcement actions on the basis of each case's individual facts and circumstances, and the EPA may exercise its enforcement discretion regarding PMC obligations.

#### *H. Why Withdrawal of the PMC FQs is Preferable*

The EPA has over ten years of experience with the PMC FQs and has concluded, as discussed above, that these FQs have contributed to non-compliance with the RRP rule in rental property managed by PMCs.

EPA's experience also has shown that PMCs routinely hire smaller, uncertified firms to conduct RRP activities. Collectively these hiring decisions by PMCs have an outsized impact on worksite compliance at properties managed by PMCs as the numerous contractors for renovation, repair and painting activities are often small and transitory. Withdrawing the PMC FQs signals that EPA plans to hold both

the PMCs and the contractors they hire responsible for compliance if the circumstances indicate that both entities performed or offered to perform renovations for compensation in target housing or child-occupied facilities.

Withdrawal of the PMC FQs and the discussion in this notice helps to increase the impact and effectiveness of the RRP Rule and improve compliance in rental properties managed by PMCs. The EPA seeks to explain the circumstances that may give rise to compliance obligations for PMCs under the RRP Rule. We also aim to identify the potential enforcement consequences for a PMC that performs or offers to perform renovations for compensation without considering its role in RRP rule compliance.

### *I. Assessing Compliance for PMCs*

The EPA is cognizant that PMCs relying on the EPA's PMC FQs may have declined to obtain RRP certification themselves or ensure the RRP compliance of contractors they hired. Therefore, through this notice, the EPA is informing the public and PMCs that EPA intends to withdraw FQs 23002-13650 and 23002-18348 and intends, upon withdrawal, to assess compliance by PMCs that are performing or offering to perform renovations for compensation—either by using their own employees or hiring an outside firm—according to the same requirements placed upon any other entity that performs or offers to perform a renovation for compensation in target housing or child-occupied facilities.

Consistent with the RRP rule, any individual or entity (including PMCs) is subject to the RRP rule requirements when they perform or offer to perform renovation, repair or painting activities for compensation in housing and child-occupied facilities built before 1978, and therefore must be a certified firm.

Requirements for certified firms include, among other things: obtaining firm certification; providing owners and occupants with the EPA's *Renovate Right* pamphlet; assigning a certified renovator to the RRP activity (or ensuring assignment of a contractor's certified renovator); ensuring all workers onsite are certified or receive on-the-job training from a certified renovator; ensuring use of lead-safe work practices and clean-up; ensuring documentation of compliance of lead-safe work practices that minimize the release of lead-based paint hazards such as paint chips and dust containing lead; and

providing that documentation to the EPA and to EPA-authorized state programs upon request.

By providing advance notice of the planned withdrawal of the FQs in 135 days, the EPA is providing more than sufficient time for PMCs to obtain any needed certification under the Lead RRP rule. For information on how to get certified, please see <https://www.epa.gov/lead/renovation-repair-and-painting-program-contractors>.

Michael S. Regan,  
Administrator.

[FR Doc. 2021-24010 Filed: 11/3/2021 8:45 am; Publication Date: 11/4/2021]

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<sup>1</sup> Hauptman, et al., *Individual- and Community-Level Factors Associated with Detectable and Elevated Blood Lead Levels in US Children: Results From a National Clinical Laboratory*, JAMA Pediatrics (published online September 27, 2021) (finding statistically significant associations between detectable or elevated blood lead levels and zip codes with concentrations of poverty, Black populations, or Hispanic populations, and other community factors).

<sup>2</sup> National Multifamily Housing Council (NMHC) (tallying 3,405,227 rental units under management by 50 PMCs). <https://www.nmhc.org/research-insight/the-nmhc-50/top-50-lists/2019-managers-list/>

<sup>3</sup> American Housing Survey Table, 2019 National – Household Demographics – All Occupied Units – Tenure Filter: Renter – Year Built Variable (2019) (rental filtered sum of pre-1980 households (columns I-M) with one child under 6 years (rows 170-71, 176-77, 182-83) plus doubled sum of pre-1980 households of two or more children under 6 years old (rows 172,73, 178-79, 184-85) yields a *minimum* estimate of 3,188,000 children under 6 years old in pre-1980 rental housing). Spreadsheet is derived from the Custom AHS Table tool maintained by the U.S. Census at <https://www.census.gov/programs-surveys/ahs>.